

AN ORDINANCE

BY COUNCILMEMBER LEE MORRIS

AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO A CONTRACT WITH CARTER & ASSOCIATES, L.L.C., FOR THE PURPOSE OF SUPERVISING THE CONSTRUCTION OF CERTAIN INFRASTRUCTURE PROJECTS CONNECTED WITH THE TRANSIT ORIENTED DEVELOPMENT AT THE MARTA STATION: LINDBERGH CENTER AUTHORIZING THE PAYMENT OF INVOICES FOR CONSTRUCTION O F CERTAIN INFRASTRUCTURE PROJECTS AS NECESSARY TO PAY THE CITY'S LOCAL MATCHING PORTION OF CERTAIN FEDERALLY FUNDED PROJECTS; AUTHORIZING THE APPLICATION OF FUTURE TRANSPORTATION IMPACT FEE CREDITS TO CARTER AND ASSOCIATES IN EXCHANGE FOR THE PROVISION OF FUNDS NECESSARY SUPPLEMENT THE CITY'S LOCAL MATCHING PORTION; AUTHORIZING AN EXTENSION OF THE DATE BY WHICH IMPACT FEES COMMITTED BY ORDINANCE 99-O-0941 MUST BE OBLIGATED TO CONSTRUCTION PROJECTS AND FOR OTHER **PURPOSES.**

WHEREAS, it is a policy of the City to encourage nodal land use patterns and mixed use development around certain transit stations and selected major transportation intersections; and

WHEREAS, Carter & Associates, L.L.C. ("Carter") has undertaken construction of new development at 2424 Piedmont Road more generally known as Lindbergh City Center and which is directly accessible to the Lindbergh Center MARTA transit station; and

WHEREAS the City imposes a transportation impact fee as a condition of the approval of new development to cause the developer to pay a proportionate share of the cost of system improvements needed to serve new growth and development; and

WHEREAS Carter was required to pay transportation impact fees in connection with the construction of Lindbergh Center; and

WHEREAS, Ordinance 99-O-0941 designated certain projects listed by the Atlanta Regional Commission ("ARC") and the Georgia Department of Transportation ("GDOT")

as projects which qualify for matching funds under the Transportation Equity Act for the 21st Century ("TEA-21"); and

WHEREAS, the projects listed in Ordinance 99-O-0941 are in the nature of "system improvements," as defined O.C.G.A. § 36-71-2(18), for which transportation impact fees may be expended; and

WHEREAS, Ordinance 99-O-0941 directed the application of the transportation impact fees paid by Carter for its Lindbergh Center development to be used for the engineering, design and construction work connected with the improvement of the transportation infrastructure system in the immediate area, but required that such funds be obligated to construction projects by December 31, 2001; and

WHEREAS, in Ordinance 01-O-0037 the City Council authorized the reimbursement of transportation impact fees to Carter where such fees had been used to fund preliminary engineering work for projects identified by Ordinance 99-O-0941 and such preliminary engineering costs do not qualify as local matching funds; and

WHEREAS, the availability of a local matching funds component is a requirement that the City must meet in order to utilize TEA-21 funds under the GDOT Local Government Project Agreements ("LGPA") already in place; and

WHEREAS, if the funds made available by TEA-21 are to be utilized, the City must provide a local matching portion equal to 20% of the project budget, such that the date for expiration of the funding commitment must be extended in order to have such impact fees available for the City's local match or reimbursement of engineering fees; and

WHEREAS, the reimbursement of preliminary engineering costs authorized by Ordinance o1-O-0037 has reduced the amount of transportation impact fees available for the City's local matching funds; and

WHEREAS, to the extent that the funds appropriated by Ordinance 99-O-0941 have been disbursed pursuant to Ordinance 01-O-0037, or are otherwise insufficient, Carter will agree to provide funding for the City's local matching portion necessary to secure federal funding for two projects for which LGPA's are already in place, if the City agrees that Carter will be given transportation impact fee credits in the amount of the funding so provided by Carter, which can be used to pay future transportation impact fees associated with further development at Lindbergh City Center; and

WHEREAS, the City of Atlanta believes that a public and private partnership to begin those projects which can be fully funded immediately offers unique opportunities to significantly improve access and traffic flow to the transit oriented development at the Lindbergh Center MARTA Station; and

WHEREAS, the City desires to continue the momentum of development in the area of the

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Lindbergh Center MARTA Station by leveraging available federal funds and Carter desires to work with the City to supervise the design, engineering, and construction work associated with access and traffic flow to the transit oriented development in the area of the Lindbergh Center MARTA Station by acting as the construction manager for projects identified by the ARC and GDOT as AT-AR BP 138 / 762518, CM-00BK(31) (Lindbergh Drive) and AT-AR BP 293 / 762624, CM-7626-00(240) (Peachtree Hills Avenue) (collectively, the "Projects," individually "Lindbergh" and "Peachtree Hills") under the terms provided in the Agreement authorized by this ordinance; and

WHEREAS, the implementation of a third project, which is intended to improve E. Wesley Rd. from Peachtree Rd. to Piedmont Rd., identified by the ARC as AT-AR BP 301(E. Wesley Rd.) may follow these projects as soon as is reasonably possible and when funding is available; and

THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA HEREBY ORDAINS AS FOLLOWS:

Section One:

The Mayor is authorized to enter into a contract with Carter which is substantially in the form attached as Exhibit "A", to act as construction manager for contractors hired by the City to complete the scope of work in the LGPA's for Lindbergh and Peachtree Hills which are attached as Exhibit "B."

Section Two

The Mayor is authorized to enter into one or more contracts to complete the scope of work in the LGPA's for Lindbergh and Peachtree Hills which are attached as Exhibit "B." provided that no contract commits the City to expend transportation impact fees or other funds for those projects in excess of that which has already been appropriated by Ordinance 99-O-0941 and 01-O-0037.

Section Three:

Consistent with the terms of the LGPA's attached as Exhibit B, which have already been authorized by previous action of the City Council, the Chief Financial Officer is authorized to pay such invoices which are generated by the contracts to complete the scope of work contained therein or to apply to the Georgia Department or Transportation for payment for work that has been completed pursuant to the contracts authorized herein, provided that all such invoices have been approved for payment by the Commissioner of Planning, Development and Neighborhood Conservation.

Section Four:

The Mayor is authorized to enter an agreement, approved by the City Attorney, which allows Carter to be given credits against future transportation impact fees which would be imposed on development reasonably related to Lindbergh City Center in an amount equal to the funds actually provided by Carter towards the funding of the local

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match component required by the LGPA's for Lindbergh and

Peachtree Hills.

Section Five:

The Mayor is authorized to amend the contract with Carter to include the management of the of the E. Wesley Road improvements as described in ARC project number AT-AR BP 301 if sufficient funds become available to meet the local match portion of that project prior to the expiration of the contract with Carter.

Section Six:

The date by which impact fee funds committed to the projects by Ordinance 99-O-0941 is extended until December 31, 2003.

Section Seven:

Carter shall be reimbursed for out of pocket expenses reasonably incurred in completion of the contract and paid a flat fee which in total shall not to exceed 3% of the total costs incurred in the construction of the projects undertaken pursuant to this Ordinance. Said amounts to be paid from FAC 1C28 592001 M11X0 451 9985 (Trans. Impact Fee Reserve) on the schedule provided in the contract.

Section Eight:

The contract authorized by this ordinance shall not become effective

until it has been signed by Mayor and delivered to Carter.

Deputy Clerk

ADOPTED by the Council APPROVED by the Mayor

DEC 03, 2001 DEC 11, 2001



STATE OF GEORGIA

COUNTY OF FULTON

CONSTRUCTION MANAGEMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of ______, 2001 by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia, and CARTER & ASSOCIATES, LLC ("Carter"), a limited liability company in Fulton County, State of Georgia, existing under the laws of the State of Georgia.

WITNESSETH

WHEREAS, the City of Atlanta imposes a transportation impact fee as a condition of the approval of new development to pay a proportionate share of the cost of system improvements needed to serve new growth and development; and

WHEREAS Carter was required to pay transportation impact fees in connection with the construction of a new development at 2424 Piedmont Road which is more generally known as Lindbergh City Center; and

WHEREAS, Ordinance 99-O-0941 directed the application of the transportation impact fees paid by Carter for the engineering, design and construction work connected with the construction of transportation infrastructure projects in the area; and

WHEREAS, three projects in this area have also been identified by the Atlanta Regional Commission ("ARC") as projects which qualify for matching funds under the Transportation Efficiency Act for the 21st Century ("TEA-21"); and

WHEREAS, in Ordinance 01-O-0037 the City Council authorized the reimbursement of transportation impact fees to Carter where such fees had been used to fund the design, engineering, and construction work for the three projects identified by the ARC; and

WHEREAS, the Georgia Department of Transportation ("GDOT") has agreed in principle to make available the TEA-21 funding for the construction of the three projects identified by the ARC and that such funding will be matched with the funding provided by the City such that the transportation impact fees and the TEA-21 funds will be sufficient to complete the construction of two of the three projects, and such agreement is reflected in the agreements entered into between the City and GDOT (the "GDOT Agreements"), which are attached hereto as Exhibit B; and

WHEREAS, the timely availability of a local matching funds component is a requirement that the City must meet in order to secure TEA-21 funds; and

WHEREAS, Carter can assist to facilitate an arrangement to maximize the use of these impact fee credits and payments which were made available for design, engineering, and

Construction work connected with development of the projects identified in Ordinance 99-O-0941 and preliminary engineering costs reimbursed by Ordinance 01-O-0037; and

WHEREAS, the City of Atlanta and Carter believe that a public and private partnership to complete the projects set forth in this Agreement offers unique opportunities to significantly improve access and traffic flow to the transit oriented development in the area of the Lindbergh Center MARTA Station; and

WHEREAS, the City desires the continued involvement of Carter in the development in the area of the Lindbergh Center MARTA Station and Carter desires to work with the City to supervise, certain design, engineering, and construction work associated with access and traffic flow to the transit oriented development in the area of the Lindbergh Center MARTA Station by acting as construction manager for projects identified by the ARC as AT-AR BP 138 (Lindbergh Drive) and AT-AR BP 293 (Peachtree Hills Avenue) (collectively, the "Projects," individually "Lindbergh" and "Peachtree Hills") under the terms provided in this agreement and its exhibits and attachments (hereinafter collectively referred to as the "Agreement"); and

WHEREAS, the implementation of the third project which will improve E. Wesley Rd. from Peachtree Rd. to Piedmont Rd., a project identified by the ARC as AT-AR BP 301 (E. Wesley Rd.) will follow the initiation of this Agreement as soon as is reasonably possible and when funding is available; and

WHEREAS, Ordinance 01-O-xxxx, adopted by the City Council on xxx, xxx, 2001 and approved by the Mayor on xxx, xxx, 2001 and made a part of hereof by reference, which authorized the Mayor to enter into this agreement with Carter.

NOW THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter, and for other good and valuable consideration, the parties hereto do agree as follows:

1.

STATEMENT OF AGREEMENT

The City of Atlanta (hereinafter, "the City") and Carter (hereinafter "Construction Manager") agree as follows. Construction Manager will act as a construction manager and advisor for the City in respect of the Projects. The services to be performed by Construction Manager (the "Services") are specifically set forth in Exhibit "A", attached hereto. Construction Manager acknowledges and agrees that it will not be compensated with any federal funds.

TIME OF PERFORMANCE

Construction Manager shall commence the Services upon the execution of this Agreement and shall continue until the Projects are accepted by the City.

3.

PROFESSIONAL RESPONSIBILITY

- (a) Construction Manager represents that it has, or will secure at its own expense, all personnel required to perform all Services.
- (b) All of the Services will be performed under the direct supervision of Construction Manager. All personnel engaged in the Services by Construction Manager shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.
- (c) Construction Manager agrees that all agreements by Construction Manager with any consultants or other persons engaged by Construction Manager in the performance of the Services (hereinafter "Consultants") shall cause all such Consultants to be bound to the same standards of performance as this Agreement. No action, omission, error or failure to act on the part of any Consultant shall excuse the obligations of Construction Manager under this Agreement. This Agreement shall not be assigned without the consent of the non-assigning party.
- (d) Construction Manager acknowledges that the City will contract with contractors and others to construct the Projects and to assume certain other obligations under the terms of the GDOT Agreements to perform the construction of the Projects to certain specifications as required by GDOT. The City acknowledges that Construction Manager is not actually performing any of the design services or construction work for the Projects, but supervising the same on behalf of the City; and, accordingly, the City acknowledges that Construction Manager is not responsible for the performance or nonperformance of the persons or entities performing such design services or construction work for the Projects. The foregoing shall not relieve Construction Manager from the obligation to perform the Services in accordance with the standard of care generally applicable to construction managers performing similar services in respect of projects similar to the Projects.
- (e) Construction Manager agrees that the specifications required by GDOT in transportation infrastructure improvement projects under TEA-21 are generally known and that the specifications to be applied to the Projects are GDOT's

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specifications. Construction Manager will incorporate the GDOT specifications in any construction contracts it prepares for the City's use on the Projects.

4.

REPORTS AND DOCUMENTATION

- (a) All reports, information, data or other documents given to Construction Manager by the City under this Agreement shall be kept confidential and shall not be made available to any Consultant, individual or organization by Construction Manager without the prior written approval of the City. Documents prepared by Construction Manager which contain information or data, in any form, that was provided to Construction Manager by the City and that would not have been available to Construction Manager except for the City's transfer of such information or data pursuant to this Agreement or in anticipation of this Agreement, shall not be made available to any individual or organization by Construction Manager for any purpose not specific to this Agreement without the prior written approval of the City or unless required by law.
 - (1) Construction Manager shall specifically provide in all of its contracts or agreements with Consultants that the specific obligations set forth in this paragraph shall be binding on any Consultant and such documents shall further provide that in the event that any Consultant shall breach the agreement to keep confidential all reports, information, data or other documents, given to Construction Manager by the City, such Consultant shall indemnify the City for all costs which are required by the City to enforce its rights to ownership of the reports, information, data or other documents, given to Construction Manager by the City or which arise from any issue related to the release of the same.
- (b) The City will make available in a timely manner all records and documents required by Construction Manager to fulfill its obligations under this Agreement.
- (c) All digital data transferred to Construction Manager is the proprietary product of the City. The City shall retain title and ownership of this digital data. In no event will the City be liable for any damages whatsoever, including but not limited to, direct or indirect damages, any loss of profits, any costs or expenses incurred, any lost savings, or other incidental or consequential damages, arising out of the use or arising out of the inability to use its digital data. Construction Manager may not redistribute, rent, lease, sell, transfer or otherwise use for any purpose not specific to this Agreement, any digital data provided by the City, or any portion thereof, without the express written permission of the City.

- (1) Construction Manager shall specifically provide in all of its contracts or agreements with Consultants that the specific obligations set forth in this paragraph shall be binding on any Consultants and such documents shall further provide that in the event that any Consultant shall breach the agreement not to redistribute, rent, lease, sell, or transfer any digital data provided by the City or any portion thereof, without the express written permission of the City, such Consultant shall indemnify the City for all costs which are required by the City to enforce its rights to ownership of the digital data or which arise from any issue related to the redistribution, rental, lease, sale or other transfer.
- (d) The City has made known to Construction Manager, and Construction Manager acknowledges such notice, that the digital data contains known errors and inconsistencies. The City does not ensure, represent, or warrant in any way the accuracy and/or reliability of its digital data. The digital data is provided in an "as is" format and condition. Construction Manager expressly assumes all risks and liabilities that may arise from its use of the data. Use of the digital data in no way entitles Construction Manager or any of its officers, employees, designees, or agents to recover any damages whatsoever from the City or its officers, agents, or employees for any cause of action based on the digital data. Construction Manager hereby forever waives for itself, its heirs, successors, and its assignees any and all rights to any claim to damages whatsoever arising out of the use of the City's data by Construction Manager, and/or the provision of this data to Construction Manager and/or the transfer of this data to Construction Manager.
 - (1) Construction Manager further agrees that the agreement, recited in this subpart, to waive for itself, its heirs, successors, and its assignees any and all rights to any claim to damages whatsoever arising out of the use of the City's data by Construction Manager, and/or the provision of this data to Construction Manager and/or the transfer of this data to Construction Manager shall be included in any and all of Construction Manager's subcontracts or agreements related to the Services and that any Consultant shall agree to the same.

5.

CHANGES IN SCOPE OF SERVICES

The City or Construction Manager, may, from time to time, request changes in the scope of Services to be performed by Construction Manager under this Agreement. No such change, including any increase or decrease in the amount of the compensation to Construction Manager, which may be mutually agreed upon by and between the City and Construction Manager, shall be effective and enforceable until and unless written

amendment or change order to this Agreement has been executed by both parties and attached hereto.

6.

TERMINATION OF AGREEMENT

(a) Termination by the Construction Manager for City's for Default.

If the City is guilty of a substantial breach of a provision on this Agreement, then Construction Manager may, without prejudice to any right or remedy, and after giving notice required by this section, terminate this Agreement upon thirty (30) days prior written notice of such termination, provided the City has not cured its default within the thirty (30) notice period.

(b) Termination by the City for Construction Manager's Default.

If Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or if it is otherwise is guilty of a substantial breach of a provision on this Agreement, then the City may, without prejudice to any right or remedy, and after giving notice required by this section, terminate this Agreement upon thirty (30) days prior written notice of such termination, provided Construction Manager has not cured its default within the thirty (30) notice period, and finish the Projects by whatever method it deems expedient, including but not limited to replacing Construction Manager by another construction manager.

(c) Termination for Convenience of the City.

The City may, at any time upon thirty (30) days prior written notice to Construction Manager, terminate (without prejudice to any right or remedy of the City) the whole or any portion of this Agreement for the convenience of the City. If the City terminates the whole or any portion of this Agreement at the City's convenience, then the City shall only be liable for Construction Manger's Fee earned through the date of termination and reasonable costs and expenses attributable to such termination, including amounts due in settlement of terminated contracts with Construction Manager's consultants.



EQUAL BUSINESS OPPORTUNITY (EBO)

In accordance with the November 5, 2001 Sole Source Designation for the Carter & Associates, L.L.C. by Felicia Strong-Whitaker, the City's Director of the Bureau of Purchasing & Real Estate, which is attached as Exhibit "C", Construction Manager acknowledges and understands it is the policy of the City of Atlanta to actively promote full and equal business opportunities for local minority and female enterprises through its Equal Business Opportunity Program as outlined in the City of Atlanta Code of Ordinances, part 2, Division 12. Construction Manager acknowledges the availability of minority and female owned firms in the Atlanta area is 17% Minority Business Enterprise ("MBE") -- African-American Business Enterprise ("AABE") and Hispanic Business Enterprise ("HBE") -- and 17% Female Business Enterprise ("FBE") as outlined in the previously referenced provisions of the City Code. Construction Manager further acknowledges that it will use its best efforts to utilize minority and female business enterprises consistent with their availability in the Atlanta area. Construction Manager agrees to provide all pertinent information regarding participate by MBE's and FBE's within 30 days after a request by the Office of Contract Compliance.

8.

FUNDING OF THE PROJECTS

- (a) Construction Manager hereby acknowledges that the City intends to fund its portion of the construction cost of the Projects and amounts due Construction Manger under this Agreement with the funding approved for the Projects in Ordinance 99-O-0941 which commits transportation impact fees equal to the amount paid by Construction Manger for the development at 2424 Piedmont Road.
 - (1) The parties agree that to date Construction Manager has paid the sum of \$509,409.00 as its transportation impact fee on building permit BB 200004841 and \$29,145 as its transportation impact fee on building permit BB 200103698 and that these funds are allocated to FAC 1C28 529010 M11X04519985.
 - (2) The parties agree that pursuant to Ordinance 01-O-0037 that Construction Manger has been authorized to receive reimbursements from the City for preliminary design and engineering costs that will not qualify for matching funds under TEA-21 and that such reimbursement was and will be paid from FAC 1C28 529010 M11X04519985.
- (b) Pursuant to Ordinance 99-O-941, the City has agreed to the allocation of \$463,000 of the transportation impact fees paid by Construction Manager to be used as matching

funds for the Projects. The parties recognize that the Georgia Department of Transportation ("GDOT") has committed in principle to matching the funds committed by the City pursuant to GDOT Agreements for Lindbergh and Peachtree Hills (collectively, the "GDOT Agreements") and that funds in the amount of \$1,846,000 are to be made available by GDOT to pay costs associated with the Projects (the "GDOT Funds"). The City agrees that any payments from the GDOT Funds for these Projects will be applied to the contractual commitments by the City to construct the Projects.

- (1) Lindbergh The budgeted cost for the construction of the Lindbergh project is \$1,233,000. The City's matching portion is not to exceed \$247,000 and is to be funded from transportation impact fees with \$986,000 to be paid from the federal matching component under TEA-21 and the TE Agreements to be entered into between the City and GDOT.
- (2) Peachtree Hills The budgeted cost for the construction of the Peachtree Hills project is \$1,075,000. The City's matching portion is not to exceed \$215,000 and is to be funded from transportation impact fees with \$860,000 to be paid from the federal matching component under TEA-21 and the TE Agreements to be entered into between the City and GDOT.

Should the use of transportation impact fees paid by Construction Manager for the purpose of reimbursement of the preliminary engineering costs authorized by Ordinance 01-O-0037 reduce the remaining balance of such fees below the level required to fund the City's portion of the local match for any portion of either or both GDOT Agreements, Construction Manager may make adequate funds available to satisfy the City's portion of required local matching funds pursuant to a separate agreement between the City and Construction Manager.

9.

PAYMENT OF INVOICES

- (a) Construction Manager shall be paid a fee ("Construction Manager's Fee") equal to three percent (3%) of the aggregate of all construction costs and design fees for the Projects ("Project Costs"). Project Costs shall include amounts properly due under the City's contracts for the construction of the Projects and properly due the design professionals for the Projects who contract with the City after the date of this Agreement, including any insurance and bond premiums incurred by said general contractor(s) and design professionals.
- (b) Invoices for Construction Manager's Fee shall be submitted to the City monthly by the 5th day of the month. The invoice for Construction Manager's Fee shall be submitted simultaneously with pay applications of the general contractor(s) for the Projects and the

Projects' design professionals, after the pay applications have been reviewed and approved by Construction Manager, and shall be in the amount of three percent (3%) of the aggregate amount then due the general contractor(s) and design professionals.

(c) The City shall make payment of Construction Manager's Fee to Construction Manager within thirty (30) days after its receipt of Construction Manager's invoice.

10.

INSURANCE & BONDING

(a) Insurance

During the entire term of this Agreement, Construction Manager agrees to obtain and maintain insurance required by the City, as specified in Exhibit "D". The City shall be named as an additional insured in each policy of liability insurance, commercial crime insurance, and errors and omissions insurance, and Construction Manager shall furnish the City a Certificate of Insurance showing required coverage. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Georgia Code.

(b) Bonding.

- (1) At the time of the execution by the City of any construction contract for the Projects, Construction Manager will verify that such contractor has furnished to the City a performance bond and a payment bond for the services to be performed under the contract in an amount equal to 100% of the contract sum.
- (2) Each payment and performance bond provided by any such contractor shall name the City of Atlanta as a obligee.
- (3) Construction Manager will verify that all performance bonds and payment bonds required to be provided by the City's contractors shall be in a form acceptable to the City.
- (4) The person executing the performance bonds and payment bonds on behalf of the surety will file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of the surety.
- (5) Construction Manager agrees to indemnify the City from any losses arising from the failure of Construction Manager, in accordance with the standard of care required of Construction Manager under this Agreement, to verify that a contractor

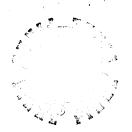
has obtained a payment or performance bond as required by this Agreement, except when such loss arises as the result of the negligence of City, or its officers or employees.

- (6) Construction Manager agrees to verify that all contracts let by the City for the construction of the Projects provide that the specific obligations set forth in this paragraph shall be binding on all contractors.
- (c) All conditions in this paragraph 10 supplement the conditions imposed by Exhibit "D" and are not superseded by the terms of Exhibit "D". In the event that the terms of Exhibit "D" and this paragraph 10 are in conflict, the more specific term will be presumed to govern the more general term.

11.

INDEMNIFICATION

- (a) In addition to its agreement to obtain and maintain the insurance as set forth herein above, Construction Manager agrees to release the City of Atlanta, its officers, agents and employees, from all claims for bodily injury or death or damage or destruction of real property or tangible personal property to the extent they arise out of any negligent act or omission of Construction Manager or any consultant or from any negligent condition created or maintained by Construction Manager or any Consultant, or any of their officers, employees or agents, which condition was not specified to be created or maintained by this Agreement.
- (b) In addition to the obligation to require that all Construction Manager's consultants and subcontracts comply with the insurance requirements set forth in Paragraph 10 and Exhibit "D" and to the fullest extent allowed by law, Construction Manager agrees to cause each consultant or subcontractor at any level to indemnify and hold harmless the City of Atlanta, its officers, agents and employees, from all claims for bodily injury or death or damage or destruction of real property or tangible personal property, against the City of Atlanta, its officers, agents, and employees, whether such claims arise out of any negligent act or omission of the City, but only to the extent the City is negligent in part and not solely negligent. Each consultant or subcontractor shall agree that its agreement to indemnify the City of Atlanta, its officers, agents and employees shall be to the extent of the damage actually caused by Construction Manager or its consultants or the policy limits of any insurance required under this Agreement or any contract with Construction Manager or any subcontract at any level, which ever is greater.



CITY'S RIGHT OF INSPECTION

The City shall have the right to inspect any part of the work on the Projects, at any time. Inspectors or designees from the Department of Public Works, Public Services Division, or any other City department or bureau are given the right of entry to all work sites at any time and all office sites during business hours and upon reasonable notice to conduct inspections of the Projects and the associated records as deemed necessary by the Commissioner of the Department of Planning, Development and Neighborhood Conservation of by the Director of the Bureau of Planning. Construction Manager shall include the foregoing right of entry and inspection in all forms of contracts for execution by the City in connection with the Projects. This right of entry and inspection shall include the right to inspect and audit all books and records of which reasonably relate to this Agreement.

13.

PERMITS AND LICENSES

Construction Manager shall obtain, at its own expense, all application for permits not previously provided by the City and licenses required by all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the performance of the Services.

14.

NOTICES

All notices required herein shall be in writing and delivered to either party at the address contained herein by: (a) hand delivery at the aforementioned address; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) by Facsimile immediately followed by a confirmation call. The day upon which such notice is hand delivered, mailed or faxed shall be deemed the date of service of such notice.

To Construction Manager:

Charles Konas

Carter & Associates, L.L.C. 1275 Peachtree Street Atlanta, Georgia 30309

with a copy to:

A. Trent Germano

Carter & Associates, L.L.C. 1275 Peachtree Street Atlanta, Georgia 30309 To the City:

Michael Dobbins

Commissioner, Department of Planning

and Neighborhood Conversation

Suite 1450

55 Trinity Avenue, S.W. Atlanta, Georgia 30335

with a copy to:

Norman Koplan

Acting Commissioner, Department of Public Works

Suite 4700

55 Trinity Avenue, S.W. Atlanta, Georgia 30335

15.

GENERAL PROVISIONS OF THIS AGREEMENT

- (a) The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease or reference, and shall be disregarded in the construction of this Agreement.
- (b) No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.
- (c) This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.
- (d) Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.
- (e) The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.



ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements and constitutes the full, complete and entire agreement between the parties with respect to the terms of the Agreement; no member, officer, employee, representative or agent of either party has authority to make, or has made, any statement, agreement, representation to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both parties and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, The City and Construction Manager have executed this Agreement by their duly authorized officers, as of the date first above written.	
	CARTER & ASSOCIATES, L.L.C., a Georgia limited liability company
	By: Carter & Associates Enterprises, Inc., a Georgia corporation, its manager
	By: Name: Title:
	Attest: Name: Title:
	(CORPORATE SEAL)
CITY OF ATLANTA, GEORGIA	
Attest:	
	By:
Municipal Clerk (SEAL)	By: WILLIAM C. CAMPBELL Mayor

<u>APPROVED</u> :	RECOMMENDED:
Commissioner, Department of Planning, Development and Neighborhood Conservation	Chief Operating Officer
Commissioner, Department of Public Works	Director, Bureau of Purchasing and Real Estate
Chief Financial Officer	
APPROVED AS TO FORM:	
City Attorney	



<u>EXHIBIT "A"</u> CONSTRUCTION MANAGER'S SERVICES

A. DEFINING SCOPE OF WORK AND TEAM SELECTION

- 1. <u>Recommendation of Primary Team Members</u>. Construction Manager will propose a list of candidate firms for any design services that are required which have not already been performed. The final designation of firms to receive requests for proposal and to be interviewed will be made by the City.
- 2. <u>Selection of Primary Team Members</u>. Construction Manager will submit a Request for Proposal to each potential design professional designated by the City and, with the City, conduct interviews with each firm. Based on the oral and written presentations made by each firm, Construction Manager will recommend a design firm to the City, for the City's final decision.
- 3. <u>Preparation of Schedule</u>. Construction Manager will prepare a Project schedule for the City's approval. As new information becomes available, this schedule will be periodically revised and updated during the course of the Project.
- 4. <u>Negotiation of Contract Forms</u>. Construction Manager will prepare for the City's approval forms of contracts between the City and the design professionals and general contractor(s) for the Project.
- 5. <u>Monitor Design Professionals</u>. Construction Manager will review and monitor the work of the Project's design professionals to insure that the City's needs are being met.

B. CONCEPTUAL DESIGN AND PRELIMINARY BUDGETING

- 1. <u>Preparation of Preliminary Design</u>. To the extent not already complete, Construction Manager will coordinate and monitor the work of the Projects' design professionals in the preparation of preliminary designs based upon the agreed-upon scope of work. This preliminary design should be sufficient for the City to have a clear understanding of how the Projects will function and appear aesthetically.
- 2. <u>Preparation of Preliminary Budget</u>. Construction Manager will prepare a preliminary budget for the Project. The components of this budget will include an estimate of construction costs and all other budget elements (including, without limitation, design fees, and all other items necessary to complete the building).

C. FINAL DESIGN AND BIDDING

- 1. <u>Construction Drawings</u>. To the extent not completed, Construction Manager will review and monitor the work of the Projects' design professionals in the preparation of construction drawings, in which the concepts expressed in the preliminary designs are developed and designed in sufficient detail to allow general contractors to bid on the Projects.
- 2. <u>Preparation of Bid Documents</u>. The Construction Manager shall prepare the packages and forms required for the Projects to be bid. Construction Manager shall advertise the Projects for bid. Construction Manager understands that federal funds are being used for the Projects and that bid procedures acceptable to the Georgia DOT and the federal government must be used.
- 3. Review of Bids. Construction Manager shall assist the City in its review of bids and make a recommendation as to which contractor, if any, the City should award a contract.
- 4. <u>Preparation of Final Budget</u>. Construction Manager will prepare a final budget for the Projects, incorporating the amount of the general contractor's contract and the other elements.
- 5. <u>Audit Procedures</u>. Construction Manager will review with the City a set of audit procedures which will be used in monitoring and controlling costs during the course of construction.

D. CONSTRUCTION

- 1. <u>Construction Schedule</u>. Construction Manager will review and coordinate preparation of near-term, mid-range and long-range construction schedules prepared by the general contractor(s) and evaluate time/cost impact in determining schedule. Scheduling information will be provided to the City on a regular basis with updates of any schedule revisions.
- 2. <u>Personnel Supervision</u>. Construction Manager will coordinate and monitor the work and activities of the general contractor(s) and all design and engineering professionals retained by the City for the Projects. Construction Manager will advise the City of the performance of its duties and the enforcement of its rights under its contracts with these firms.
- 3. <u>Additional Services</u>. Construction Manager will review all requests for additional services submitted by the Project architect and other design professionals.

- 4. <u>Change Orders</u>. Construction Manager will review all requests for change orders to the general construction contract(s) (and changes or revisions to the plans and specifications with respect thereto) for appropriate scope and cost modifications, and coordinate budget revisions caused by change orders. Construction Manager will make recommendations to the City with respect to such proposed change orders.
- 5. <u>Job Meetings</u>. Construction Manager will coordinate and preside over all job meetings of primary development team members, including arranging for the scheduling of job meetings, the notification of attendees, the preparation of agendas, and the recording and distribution of minutes.
- 6. <u>Certificates, Permits, and Licenses</u>. Construction Manager will prepare and submit applications for all required certificates, permits and licenses from governmental agencies, boards, and other authorities for the construction of the Projects.
- 7. <u>Easements and Covenants</u>. Construction Manager will advise the City with respect to the execution of such easements, dedications and covenants considered necessary, appropriate or beneficial for the construction and operation of the Projects.
- 8. <u>Construction Budget</u>. Construction Manager will prepare a construction budget at a level of detail necessary to properly monitor actual costs against budget expectations.
- 9. <u>Accounting and Recordkeeping</u>. Construction Manager will determine and implement a construction phase accounting and recordkeeping system.
- 10. <u>Project Observations</u>. Construction Manager will observe and report on the progress of the Projects and evaluate the construction with reference to the general contractor(s), subcontractors, and material suppliers.
- 11. <u>Contractor Applications for Payment</u>. Construction Manager will implement accounting procedures used to analyze and evaluate applications for payment, including system checks for duplicate payments and mathematical inaccuracies, tracking of contractor and subcontractor retainages, and monitoring of various related contractual responsibilities.
- 12. <u>Construction Draw Preparation</u>. Construction Manager will review and approve all pay requests, applications for payment, bills and invoices from the general contractor(s) and design and engineering professionals with reference to applicable contractual agreements, change orders, scope of services revisions, and completion schedules. Construction Manager's management and accounting personnel will

- coordinate the preparation of construction loan draw requests with accompanying development budget summary of cost-to-date, and a schedule setting forth the payees and dollar amounts of the draw. Each draw request will carry appropriate approval signatures.
- 13. <u>Punch List</u>. Construction Manager will coordinate between the general contractor(s) and design professionals a schedule for punch list preparation and punch list performance, with reference to schedule and job cost impact, and advise the City on the cost/benefit of completing questionable punch list items.
- 14. <u>Project Close-out</u>. Construction Manager will collect, review and turn over to the City all close-out documents required from the general contractor and design professionals. The Construction Manager will also coordinate orientation meetings for the City's operations staff.

Atlanta City Council

Regular Session

01-0-1889 Contract with Carter & Associates for infrastructure projs. at Lindbergh MARTA ADOPT

YEAS: 13
NAYS: 1
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 0

Y McCarty NV Dorsey N Moore Y Thomas Y Starnes Y Woolard Y Martin Y Emmons Y Bond Y Morris Y Maddox Y Alexander Y Winslow Y Muller Y Boazman NV Pitts

LARGE ATTACHMENT:

DOCUMENT(S),

MANUAL(S)

OR

MAP(S)

NOT COPIED,

PULL ORIGINAL FOR COPY OR TO VIEW

03rd □V Vote ☑AC Vote FINAL COUNCIL ACTION MAYOR'S ACTION CENTY KUNICIPAL CLERK 1605 6 0 330 CERTIFIED Readings TEMPONIONE W □1st & 2nd **⊡**Consent Fav, Adv, Hold (see rev. side) Fav, Adv, Hold (see rev. side) Committee Refer To Members Committee Members Refer To Action: Other: Chair Other: Date Action: Chair Date First Reading Adv, Hold (see rev. side) Fav, Adv, Hold (see rev. side) Mulla ars Refer To Committee Members Refer To Action: Other: Other: Zhair, Action: ⊃ate Committee Date Referred to Chair Anonten B 1st ADOPT 2nd READ & REFER PERSONAL PAPER PROVISION OF FUNDS NECESSARY TO SUPPLEMENT 下メアスカノア WHICH IMPACT FEES COMMITTED BY ORDINANCE 99-O-0941 MUST BE OBLIGATED TO CONSTRUCTION CARTER AND ASSOCIATES IN EXCHANGE FOR THE PAY THE CITY'S LOCAL MATCHING PORTION OF INFRASTRUCTURE PROJECTS CONNECTED WITH THE TRANSIT ORIENTED DEVELOPMENT AT THE INFRASTRUCTURE PROJECTS AS NECESSARY TO AUTHORIZING THE PAYMENT OF INVOICES FOR SUPERVISING THE CONSTRUCTION OF CERTAIN AUTHORIZING AN EXTENSION OF THE DATE BY AN ORDINANC TO AUTHORIZE THE MAYOR TO AUTHORIZING THE APPLICATION OF FUTURE TRANSPORTATION IMPACT FEE CREDITS TO ENTER INTO A CONTRACT WITH CARTER & ASSOCIATES, L.L.C. FOR THE PURPOSE OF CERTAIN FEDERALLY FUNDED PROJECTS; THE CITY'S LOCAL MATCHING PORTION; PROJECTS AND FOR OTHER PURPOSES. LINDBERGH CENTER MARTA STATION; (Do Not Write Above This Line) 01- 0 -1889 BY COUNCILMEMBER LEE MORRIS Finance THE CONSTRUCTION OF CERTAIN 5 CONSENT REFER Date Referred Date Referred Date Referred Referred To: Referred To: Referred To: AN ORDINANCE